

## REMARKS

Claims 1, 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18-22, 24, 25, 27, 28, 30, 31, 33-37 and 39 are amended.

Claims 1-39 remain in the application for consideration, with claims 1, 22, and 37 being independent. In view of the foregoing amendments and following remarks, Applicant respectfully requests that the rejections be withdrawn and the application be forwarded on to issuance.

### Non-Statutory Double Patenting

Claims 1-39 are rejected on the grounds of non-statutory double patenting over claims 1-32 of U.S. Patent No. 6,768,499. These claims are further provisionally rejected on the grounds of non-statutory double patenting over the claims of various co-pending applications.

Applicant respectfully requests that these rejections be held in abeyance until the indication of allowable subject matter.

### §101 Rejections

Claims 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 20, 21, 24, 25, 27, 28, 30, 31, 33-39 stand rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter.

Applicant respectfully disagrees with the Office's rejection for the reasons given in Applicant's last response (December 27, 2006). Nevertheless, in the interest of advancing the prosecution of this matter, Applicant has amended claims 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 20, 21, 24, 25, 27, 28, 30, 31, 33-37 and 39 to recite "...computer-readable storage media..." or "...computer-readable storage

1 medium..." Accordingly, Applicant respectfully requests that these rejections be  
2 withdrawn.

3 Claims 37 and 39 stand rejected under 35 U.S.C. §101 as allegedly being  
4 directed to non-statutory subject matter. Unfortunately, the only explanation  
5 provided by the Office in this regard is to state "[t]he claims recite a data structure.  
6 Data structure is non-statutory subject matter."

7 Applicant respectfully disagrees and respectfully traverses the Office's  
8 rejection. As Applicant explained in its last response (December 27, 2006), it is  
9 unaware of any case that holds that a data structure is *per se* non-statutory. In that  
10 response, Applicant directed the Office's attention to the case of *In re Lowry*, 32  
11 F.3d 1579 (Fed Cir. 1994) which affirmed the Board's holding that a claim  
12 directed to a data structure is an article of manufacture and hence, statutory.

13 In this Office Action, the Office has provided no explanation or  
14 justification for this rejection and simply repeats its assertion that a "[d]ata  
15 structure is non-statutory subject matter." Applicant respectfully reminds the  
16 Office that the Office has the burden of setting forth a *prima facie* case of  
17 unpatentability. (see e.g. MPEP 2106 IV(C)). In view of the above discussion, the  
18 Office has not met this burden because it has failed to offer any explanation or  
19 justification whatsoever to support its argument. Accordingly, Applicant  
20 respectfully requests that these rejections be withdrawn.

### 21 **The §102 Rejections over Pelley**

22 Claims 37 and 39 stand rejected under 35 U.S.C. §102(b) as being  
23 anticipated by U.S. Patent No. 5,194,952 to Pelley.  
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1 Claim 37, as amended (added language in bold italics), recites a data  
2 structure embodied on a computer readable *storage* medium, the data structure  
3 comprising:

- 4 • one or more portions associated with at least one track of a multi-  
5 media editing project, individual tracks being associated with one or  
6 more data stream sources; and
- 7 • one or more portions associated with a composite, the composite  
8 comprising at least one track, said data structure being configured  
9 for use in programming a software-implemented matrix switch  
10 which is configured to provide a data stream defined by the multi-  
11 media editing project, ***the matrix switch being configured to route a***  
12 ***scalable number of inputs to a scalable number of outputs.***

13 In making out the rejection of this claim, the Office argues that Pelley  
14 anticipates claim 37.

15 Applicant respectfully disagrees and submits that the Pelley does not  
16 disclose a “data structure being configured for use in programming a software-  
17 implemented matrix switch”, as claimed. In fact, at no point does the phrase “data  
18 structure” even appear in Pelley. Furthermore, the matrix switch in Pelley cannot  
19 be equated with a “software-implemented matrix” as claimed because it is  
20 *implemented in hardware* as a chassis. (see e.g., Pelley, Column 3 (lines 52-55),  
21 Column 21 (lines 60-64) and Fig. 22).

22 Nevertheless, in the interest of advancing this matter, Applicant has  
23 amended this claim to clarify “the matrix switch being configured to route a  
24 scalable number of inputs to a scalable number of outputs”. This feature is  
25 missing in Pelley because the number of inputs and outputs for the hardware-  
implemented matrix switch in Pelley are fixed and non-scalable – with the number

1 of inputs being 53 and the number of outputs being 32. (see e.g., Pelley, Column  
2 5 (lines 25-28).

3 In view of the above discussion, Pelley does not anticipate this claim.  
4 Accordingly, for at least this reason, this claim is allowable.

5 Claim 39 depends from claim 37 and is allowable as depending from an  
6 allowable base claim. This claim is also allowable for its own recited features  
7 which, in combination with those recited in claim 37, are not disclosed by the  
8 reference of record.

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10 **The § 103 Rejections over Gagne in view Pelley**

11 Claims 1-21 stand rejected under 35 U.S.C. §103(a) as being obvious over  
12 U.S. Patent Application Publication 2002/0023103 to Gagne in view of Pelley.

13 Claim 1, as amended (added language in bold italics), recites a multi-media  
14 processing method comprising:

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  - providing multiple tracks each of which being capable of being
  - 17 associated with one or more digital data streams;
  - 18 • representing the multiple tracks as a single track; and
  - 19 • processing the digital data associated with the single track using a
  - 20 programmable software-implemented matrix switch in which
  - multiple inputs can be routed to multiple outputs, ***the quantity of***
  - multiple inputs and the quantity of multiple outputs being scalable.***

21 In making out the rejection of this claim, the Office argues that its subject  
22 matter is rendered obvious over Gagne in view of Pelley. Specifically, the Office  
23 argues that Gagne discloses all of the features of the claim except for “processing  
24 ... using a programmable software-implemented matrix...” as claimed. For this  
25

1 missing feature, the Office relies on Pelley and argues that it would have been  
2 obvious to modify Gagne with the teachings of Pelley.

3 Applicant respectfully disagrees and submits that, as noted above, the  
4 *hardware-implemented* matrix switch in Pelley cannot be said to disclose a  
5 “software-implemented matrix switch” as claimed.

6 Nevertheless, in the interest of advancing this matter, Applicant has  
7 amended this claim to clarify “the quantity of multiple inputs and the quantity of  
8 multiple outputs being scalable.” This feature is missing in Pelley because, as  
9 noted above, the number of inputs and outputs for the hardware-implemented  
10 matrix switch in Pelley are fixed and non-scalable.

11 In view of the above discussion, Pelley does not disclose or suggest the  
12 subject matter of this claim. Accordingly, for at least this reason, this claim is  
13 allowable.

14 Claims 2-21 depend from claim 1 and are allowable as depending from an  
15 allowable base claim. These claims are also allowable for their own recited  
16 features which, in combination with those recited in claim 1, are neither disclosed  
17 nor suggested by the references of record.

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19 **The § 103 Rejections over Gagne in view Pelley and French**

20 Claims 22-36 stand rejected under 35 U.S.C. §102(e) as being obvious over  
21 Gagne in view of Pelley and U.S. Patent No. 6,266,053 to French.

22 Claim 22, as amended (added language in bold italics), recites a method  
23 comprising:

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  - providing multiple tracks each of which being capable of being associated with one or more digital data streams;

- grouping a particular set of operations on the tracks to provide a group upon which operations can be performed that do not affect tracks that are not in the group;
- wherein said grouping comprises defining a first hierarchical tree structure that represents a media project of which the tracks comprise a part; and
- using the hierarchical tree structure to program a software-implemented matrix switch configured to process content of said tracks, *the matrix switch being configured to route a scalable number of inputs to a scalable number of outputs.*

In making out the rejection of this claim, the Office argues that its subject matter is rendered obvious over Gagne in view of Pelley and French. Specifically, the Office argues that Gagne discloses all of the features of the claim except for “a first hierarchical tree structure” and “to program a software-implemented matrix switch”. For the first missing feature, the Office relies on French and argues that it would have been obvious to modify Gagne with the teachings of French. For the second missing feature, the Office relies on Pelley and argues that it would have been obvious to modify Gagne and French with the teachings of Pelley.

Applicant respectfully disagrees and submits that, as noted above, the *hardware-implemented* matrix switch in Pelley cannot be said to disclose a “software-implemented matrix switch” as claimed.

Nevertheless, in the interest of advancing this matter, Applicant has amended this claim to clarify “the matrix switch being configured to route a scalable number of inputs to a scalable number of outputs.” This feature is clearly missing in Pelley because, as noted above, the number of inputs and outputs for the hardware-implemented matrix switch in Pelley are fixed and non-scalable.

1 In view of the above discussion, Pelley does not disclose or suggest the  
2 subject matter of this claim. Accordingly, for at least this reason, this claim is  
3 allowable.

4 Claims 23-36 depend from claim 22 and are allowable as depending from  
5 an allowable base claim. These claims are also allowable for their own recited  
6 features which, in combination with those recited in claim 22, are neither disclosed  
7 nor suggested by the references of record.

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9 **The § 103 Rejections over Pelley in view Gagne**

10 Claim 38 is rejected over 35 U.S.C. §103(a) as being obvious over Pelley in  
11 view of Gagne.

12 Claim 38 depends from claim 37. In making out the rejection of this claim,  
13 the Office argues that Pelley and Gagne disclose or suggest all of the subject  
14 matter of these claims and that it would have been obvious to combine the  
15 teachings of these references.

16 Applicant respectfully disagrees. As noted above, neither Pelley nor Gagne  
17 disclose or suggest all the subject matter of claim 37. Furthermore, this claim is  
18 also allowable for its own recited features which are neither disclosed nor  
19 suggested by these references. Accordingly, for at least these reasons, this claim is  
20 allowable.

21  
22 **Conclusion**

23 The claims are in condition for allowance. Accordingly, Applicant requests  
24 a Notice of Allowability be issued forthwith. If the Office's next anticipated  
25 action is to be anything other than issuance of a Notice of Allowability, **Applicant**

1 respectfully requests a telephone call for the purpose of scheduling an  
2 interview.  
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5 Respectfully submitted,  
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7 Dated: 5/1/2007  
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